

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 08-61136

JAMES G. MATTUS,

Chapter 13

Debtor.

Judge Thomas J. Tucker

**ORDER DENYING MOTION DEBTOR'S MOTION FOR RECONSIDERATION  
AND REINSTATEMENT OF CHAPTER 13 CASE**

This case is before the Court on "Debtor's Motion for Reconsideration and Reinstat[e]ment of Chapter 13 Case," filed on October 22, 2008 (Docket # 27, the "Motion"). Th Motion seeks relief under Fed.R.Civ.P. 60(b)(6) and L.B.R. 9024-1(c) (E.D. Mich.), from the Court's October 9, 2008 order dismissing this case (Docket # 25).

The Court has reviewed and considered the Motion, and concludes that the Motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(a)(3).

In addition, the Court notes the following. First, The allegations in the Motion do not establish any valid ground for relief from the order dismissing this case under Fed.R.Civ.P. 60(b), including Rule 60(b)(6). "[Fed.R.Civ.P.] 60(b)(6) is to be used 'only in exceptional or extraordinary circumstances which are not addressed by the first five number clauses of the Rule.'" *Fuller v. Quire*, 916 F.2d 358, 360 (6th Cir. 1990)(citation omitted). The Motion does not allege the kind of extraordinary circumstance contemplated by the Rule 60(b)(6).

Second, the Court's September 24, 2008 show cause order (Docket # 21) required the both the Debtor and his attorney to appear at the October 9, 2008 hearing at 11:00 a.m., "unless

the (filing) fees are paid in full prior to the hearing date.” The filing fees were not paid prior to the October 9, 2008 hearing date (and in fact still have not been paid, even though they remain due despite the dismissal of this case). And neither the Debtor nor the Debtor's attorney appeared at the October 9, 2008 hearing, at 11:00 a.m., or at the contested hearing held on the afternoon of October 9, 2008. This case was properly dismissed, therefore, especially given the following language, which appears in bold in the Court's September 24, 2008 show cause order: **“If the fee is not paid prior to the hearing date and if the debtor and attorney for debtor fail to appear at this hearing, the case may be dismissed.”** Debtor's Motion offers no good excuse to justify failure of either the Debtor or the Debtor's attorney to appear at the October 9 hearing, or for Debtor's failure to pay the filing fee prior to the hearing date.

Third, even if the Court were otherwise inclined to reinstate this case, it could not do so in any event, because Debtor is not eligible to be a debtor in this case under 11 U.S.C.

§ 109(h)(1). That section provides in relevant part, that

an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

The only certificate of credit counseling that Debtor filed with the Court states that Debtor received “an individual [or group] briefing that complied with the provisions of 11 U.S.C.

§§ 109(h) and 111” on September 11, 2008. (*See* “Certificate of Counseling,” filed on September 14, 2008 (Docket # 17).) Debtor filed his voluntary petition for relief in this case on August 29, 2008. Therefore, Debtor only received credit counseling *after* his petition was filed.

With exceptions not applicable here, 11 U.S.C. § 109(h)(1) requires a debtor to obtain credit counseling *before* filing a bankruptcy petition.

Accordingly, for all of the above stated reasons,

IT IS ORDERED that “Debtor’s Motion for Reconsideration and Reinstat[e]ment of Chapter 13 Case,” (Docket # 27), is DENIED.

**Signed on October 23, 2008**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**